



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL, MNDCL, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. on July 5, 2022 concerning an application made by the landlord seeking the following relief:

- an Order of Possession for unpaid rent or utilities;
- an Order of Possession for cause;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, and was represented by an agent, who gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call.

The landlord's agent testified that the tenants were served with the Notice of Dispute Resolution and other required documents by posting the Hearing Package to the door of the rental unit on May 6, 2022, along with all evidentiary material. The landlord's witness testified that the witness was present and observed the landlord's agent post the documents to the door on May 6, 2022.

The *Residential Tenancy Act* does not permit a hearing package to be served by posting it to the door of a rental unit unless the landlord only seeks an Order of Possession, and I dismissed the landlord's monetary claims with leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on December 1, 2021 and the tenants still reside in the rental unit. Rent in the amount of \$1,000.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant named in the tenancy agreement in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper level of the home. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on March 23, 2022 the landlord served the tenant named in the tenancy agreement with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail and a copy has been provided for this hearing. It is dated March 23, 2022 and contains an effective date of vacancy of April 2, 2022 for unpaid rent in the amount of \$1,000.00 that was due on March 1, 2022. The tenant paid \$500.00 after the Notice was served, leaving \$500.00 outstanding for March. The landlord has provided a copy of a Registered Domestic Customer Receipt date stamped March 23, 2022 by Canada Post which is addressed to the tenant who is named in the tenancy agreement.

The tenant was also served on the same day and in the same envelope with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated March 23, 2022 and contains an effective date of vacancy of May 2, 2022.

The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

- put the landlord's property at significant risk.

The tenants have not served the landlord with an Application for Dispute Resolution disputing either notice, and rental arrears have continued to accumulate.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing and serving an Application for Dispute Resolution upon the landlord. Also, once served with a One Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute it. If the tenant fails to do dispute the Notices, or pay the rent in full, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the Notices were served by registered mail on March 23, 2022, which are deemed to have been received 5 days later, or March 28, 2022. The landlord's agent testified that the tenant has not served the landlord with an application disputing either Notice, and I have no such application before me, and has not paid the rent in full. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy in both Notices has passed, I grant the Order of Possession effective on 2 days notice to the tenant and all occupants.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I order that the landlord may keep that amount from the security deposit held in trust.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order the landlord to keep \$100.00 from the security deposit as recovery of the filing fee.

The balance of the landlord's application is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 05, 2022

Residential Tenancy Branch